



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      MNSD

### **Introduction**

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the tenant, dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:40 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 pm. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

I note that at 1:33 pm., the tenant was no longer audible on the teleconference call. I informed the tenant that I could not hear him, and gave him the opportunity to hang up and re-join the call. I could see on the online teleconference system the tenant was still connected although I could not hear him. At 1:36 p.m., I disconnected, and re-joined the call to ensure that the problem was not originating from my end. After reconnecting, I still could not hear the tenant, but the tenant was still connected. I informed the tenant that I would end the hearing at 1:40 pm. if I could still not hear him, and that I would give a decision based on the written evidence provided.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

As the tenant was still not audible at 1:40 p.m., I ended the hearing. This decision was made based on the written submissions made by the tenant. The landlord did not submit any written evidence for this hearing.

The tenant provided the tracking information to support that he had served the landlord with the application for dispute resolution hearing package ("Application") and notice of hearing on August 23, 2020. The tracking information provided confirms that the package was delivered on September 2, 2020. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord deemed served with the Application and evidence on August 28, 2020, 5 days after mailing.

### **Issues(s) to be Decided**

Is the tenant entitled to the return of their security deposit?

Is the tenant entitled to monetary compensation for the landlord's failure to comply with the *Act*?

### **Background and Evidence**

The tenant provided the following details in their written evidence. This month-to-month tenancy began on July 1, 2019, and ended on July 1, 2020. Monthly rent was set at \$500.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$250.00, which the landlord still holds. The tenant provided a tracking number for the registered mailing of his forwarding address, which he stated was provided on July 23, 2020. The tracking information shows that the package was sent on July 22, 2020, and delivered on July 23, 2020.

The tenant filed his application requesting the return of his deposit, as well as compensation for the landlord's failure to comply with section 38 of the *Act*.

### **Analysis**

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the

forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if “at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant.”

I find that the tenant provided sufficient evidence to support that he had provided the landlord with his forwarding address on July 22, 2020. In accordance with sections 88 and 90 of the *Act*, I find the landlord deemed served with this package on July 27, 2020, 5 days after mailing. I am satisfied that the tracking information provided supports that the package was received by the landlord.

I find that the landlord did not return the tenant’s security deposit in full within 15 days of receipt of the tenant’s forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant’s security deposit, nor did the landlord have written authorization at the end of the tenancy to retain any portion of the tenant’s security deposit. In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to the return of his original deposit, plus a monetary award equivalent to the value of the security deposit.

### **Conclusion**

I issue a Monetary Order in the tenant’s favour under the following terms which allows the tenant to a return of the original security deposit, plus a monetary award equivalent to the value of the deposit as a result of the landlord’s failure to comply with the provisions of section 38 of the *Act*.

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$250.00
Monetary Award for Landlord’s Failure to Comply with s. 38 of the <i>Act</i>	250.00
<b>Total Monetary Order</b>	<b>\$500.00</b>

The tenant(s) is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 8, 2020

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Residential Tenancy Branch